

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110100
	:	TRIAL NO. B-1007434
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
OMAR HASAN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

Following a bench trial, defendant-appellant Omar Hasan appeals his convictions for cocaine and heroin possession. In November 2010, two Cincinnati police officers observed a vehicle almost strike a telephone pole and then abruptly stop in an alley. While they waited for back-up assistance to arrive, the officers observed Hasan, a rear-seat passenger, throw a postal-delivery box into the front seat. Hasan then exited the vehicle, crouched behind it, and fled on foot. Hasan was apprehended within minutes.

The officers located wrapping materials and bags of drugs underneath the vehicle at the spot where Hasan had crouched. The postal-delivery box contained other wrapping materials. Hasan's fingerprints were found on the box. The mailing label had been removed from the box, but several incomplete markings remained on the outside. An investigating officer testified at trial that the postal-delivery box had been addressed to Hasan's sister.

The trial court acquitted Hasan of each trafficking count, but found him guilty of four counts of possessing cocaine and heroin. The court imposed an aggregate one-year sentence of incarceration.

On appeal, Hasan contends that, over his objection, the trial court erred in admitting hearsay testimony establishing the addressee of the postal-delivery box. We agree.

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid.R. 801(C). Here, a police officer testified that although the mailing label had been ripped from the box, a postmaster had been able to obtain a copy of the label from the markings remaining on the box. The postmaster did not testify at trial and was never subject to cross-examination about his methods in reconstructing the mailing label. The postmaster’s out-of-court statements were the principal evidence used to establish Hasan’s role in an alleged drug-trafficking scheme. Their admission was error.

But unlike evidentiary rulings that are within a trial court’s discretion, the admission of hearsay is reviewed in light of Evid.R. 103(A) and the standard established in Crim.R. 52(A), which provide that any errors are harmless unless the record demonstrates that they affected a party’s substantial rights. See *State v. Sutorius* (1997), 122 Ohio App.3d 1, 7, 701 N.E.2d 1; see, also, *In re Wells*, 1st Dist. No. C-080131, 2008-Ohio-6688, ¶15.

Though the trial court’s decision to admit hearsay testimony was erroneous as a matter of law, we cannot say that the decision prejudiced Hasan by affecting his substantial rights. The trial court acquitted Hasan of each drug-trafficking charge. And ample evidence, not dependent on the existence of the restored mailing label, remained to support the possession charges. Thus the admission of the hearsay testimony was

harmless and does not justify reversal and a new trial. The sixth assignment of error is overruled.

In three interrelated assignments of error, Hasan challenges the weight and the sufficiency of the remaining evidence adduced to support his cocaine- and heroin-possession convictions. Our review of the entire record fails to persuade us that the trial court, acting as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that the convictions must be reversed and a new trial ordered. See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. The state adduced ample evidence, including the testimony of the police officers who stopped the vehicle, that Hasan had thrown the drug-containing box into the front seat, had crouched behind the car in an area where other narcotics were found, and then had fled. Since the weight to be given to the evidence in this case and to the credibility of the witnesses were for the trier of fact to determine, the trial court was entitled to reject Hasan's theory that others had had access to the drugs and that he had not possessed the drugs. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

The record reflects substantial, credible evidence from which the trier of fact could have reasonably concluded that all elements of the charged crimes had been proved beyond a reasonable doubt, including that Hasan had exercised dominion and control over the drugs. See R.C. 2925.01(K); see, also, *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶136; *State v. Thomas*, 1st Dist. No. C-020282, 2003-Ohio-1185, ¶9.

The trial court also could have properly denied Hasan's motions for judgments of acquittal on the possession charges, as reasonable minds could have reached different conclusions as to whether each element of the crimes charged had been proved beyond a reasonable doubt. See Crim.R. 29; see, also, *State v. Bridgeman* (1978), 55 Ohio

St.2d 261, 381 N.E.2d 184. The first, second, and third assignments of error are overruled.

Hasan's fourth assignment of error, in which he claims that his trial counsel's performance was deficient for failing to file a suggestion of incompetence and to enter a plea of not guilty by reason of insanity, is overruled. At several points in the proceedings, Hasan vigorously had informed the trial court of his unusual understanding of constitutional law.

Judicial scrutiny of trial counsel's performance must be highly deferential; this court must indulge a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. See *Strickland v. Washington* (1984), 466 U.S. 668, 689, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373. In light of Hasan's ability to interact coherently with his counsel and with the trial court despite his odd theories of jurisprudence, we hold that there were no acts or omissions by his trial counsel that deprived Hasan of a substantive or procedural right or that rendered the trial fundamentally unfair. See *Lockhart v. Fretwell* (1993), 506 U.S. 364, 113 S.Ct. 838; see, also, *Strickland v. Washington*, 466 U.S. at 687, 104 S.Ct. 2052; *State v. Bradley* at paragraphs two and three of the syllabus.

We also overrule Hasan's fifth assignment of error, in which he claims that the trial court erred in failing sua sponte to order a competency hearing. As Hasan was able to assist his counsel and clearly understood "the nature and objective of the proceedings," we cannot say that the trial court abused its discretion. R.C. 2945.37(G); see, also, *State v. Rahman* (1986), 23 Ohio St.3d 146, 153, 492 N.E.2d 401.

Therefore, the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

HENDON, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on October 19, 2011

per order of the court _____.
Presiding Judge